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Remarks

Reconsideration of the above-captioned application is respectfully requested. All pending claims (1-20) have been rejected under 35 U.S.C. §102 as being anticipated by Killian, USPN 6,163,316. To overcome the rejections, Claim 1 now recites that the database is accessed to return recommendations based at least partially on a viewer-selected portion of the text in DVD content as disclosed on page 5, lines 7-11. Independent Claim 7 now recites receiving a viewer selection of content borne on a DVD, flash memory, or CD that communicates with the TV as taught on page 5, last paragraph. Independent Claim 12 as now amended recites means for selecting alpha numeric characters that are part of a DVD content, and automatically accessing a source of recommended viewing and/or shopping based thereon. Claims 2, 4, 14, 16, and 20-27 have been canceled, so that Claims 1, 3, 5-13, 15, and 17-19 remain pending.

The fact that Applicant has focussed its comments distinguishing the present claims from the applied references and countering certain rejections must not be construed as acquiescence in other portions of rejections not specifically addressed.

The rejection uses the recorder 20 of Killian as the claimed PVR and alleges that its processor returns programming recommendations or records programs based on "media-stored content", evidently the EPG applet 70. However, the relied-upon EPG applet 70 with viewer profile 80 is downloaded from the Internet and run on the JAVA platform 12, col. 8, lines 5-8 and figures 1 and 3. It is not borne on a DVD much less is it text from the DVD as now recited in Claim 1. Moreover, the EPG is never taught or suggested to reside on a CD or flash memory or DVD that communicates with the TV as now recited in Claim 7. Further, the EPG of Killian is not alpha-numeric content on a DVD as recited in Claim 12. In short, nothing in Killian

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remotely suggests recording or recommending content based on a user selecting text from a DVD or other player. The rejections are overcome.

A few additional comments are germane. *Apropos* Claim 4, the element 20 has been used as both the claimed DVD and the claimed PVR. It can't be both. Although Claim 21 has been canceled, it had been rejected based on the present application itself, which is not part of the prior art. Moreover, the rejection of Claim 21 was predicated on the taking of official notice. MPEP §2144.03 advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

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For each and every taking of official notice, Applicant hereby prospectively requests not only a prior art showing under MPEP §2144.03 but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected.

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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